

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL ASSOCIATIONS

1200 19TH STREET, N.W.

SUITE 500

WASHINGTON, D. C. 20036

(202) 955-9600

ORIGINAL

FACSIMILE

(202) 955-9792

NEW YORK, N.Y.

LOS ANGELES, CA.

MIAMI, FL.

CHICAGO, IL.

STAMFORD, CT.

PARSIPPANY, N.J.

BRUSSELS, BELGIUM

HONG KONG

AFFILIATED OFFICES

NEW DELHI, INDIA

TOKYO, JAPAN

EX PARTE OR LATE FILED

October 8, 1997

JUDITH ST. LEDGER-ROTY

DIRECT LINE (202) 955-9879

E-MAIL: jstledgerrody@kelleydrye.com

DOCKET FILE COPY ORIGINAL

William F. Caton, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

RECEIVED
OCT - 8 1997
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Re: EX PARTE PRESENTATION - In the Matter of Implementation
of the Pay Telephone Reclassification and Compensation
Provisions of the Telecommunications Act of 1996 - CC Docket
No. 96-128; and Policies and Rules Concerning Operator Service
Access and Pay Telephone Compensation - CC Docket No. 91-35**

Dear Mr. Caton:

On October 7, 1997, Rob Hoggarth, Senior Vice President, Paging and Narrowband for the Personal Communications Industry Association ("PCIA") and the undersigned, met with John Muleta of the Common Carrier Bureau, and spoke to Jim Casserly of Commissioner Ness' office, to discuss the payphone ex parte presentation of Paging Network, Inc., made on September 22, 1997, in the above-captioned proceeding. In particular, the discussion focused on the need for measured services for subscriber 800 calls placed from pay telephones.

Due to the hour of the above-described meetings, counsel was unable to file this letter on the same day that the meeting occurred. To the extent the Commission deems necessary, counsel hereby requests waiver of § 1.1206(a)(2) of the Commission's rules requiring same-day submission of the instant letter.

No. of Copies filed
LIST ASSOCIATION

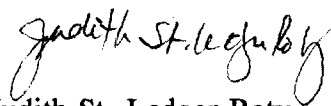
012

KELLEY DRYE & WARREN LLP

William F. Caton, Secretary
October 8, 1997
Page 2

In accordance with the Commission's rules, 47 C.F.R. § 1.1206(a)-(b), we are filing an original and two copies of this *ex parte* presentation. Please direct any questions regarding this filing to the undersigned.

Respectfully submitted,


Judith St. Ledger-Roty

JSLR:cpa

cc: John Muleta
Jim Casserly

PAGING NETWORK, INC.

PAGING NETWORK, INC.

Payphone Compensation
CC Docket No. 96-128

September 22, 1997

THE FCC RECORD SUPPORTS TWO METHODOLOGIES:

➡ A MARKET-BASED APPROACH UTILIZING A CALLER-PAYS MODEL

- ➡ Coin in the box for all subscriber 800 calls.
- ➡ Unique 8XX NPA which allows for provision of caller-pays billing option.

OR

➡ A COST-BASED APPROACH UTILIZING A CARRIER-PAYS MODEL

- ➡ Cost-based rates based on duration of use.
- ➡ Assessed in six-second increments, as are other costs of 800 service for 800 subscriber calls.

THE COMMISSION SHOULD RECONSIDER ADOPTION OF A CALLING-PARTY PAYS MODEL

- ➡ **The Cornerstone Of The FCC's Market Approach Using A Carrier-Pays Model, That Is, The Ability Of 800 Subscribers To Block Specific Calls, Is Non-Existent**
 - ➡ The 800 subscriber will not be able to choose whether to accept or reject specific calls from particular payphones.
 - ➡ No ability to exert downward pressure on PSP's rates.
 - ➡ The record demonstrates that it is neither technically nor economically feasible to provide the data necessary to block calls on a per-subscriber or per-call basis.
 - ➡ Most LECs unable to pass "29" and "70" ANI coding digits and only 3,000 of 26,000 LEC end offices are equipped to provide Flex ANI coding digits.
 - ➡ Necessary Flex ANI equipment/software upgrades would cost approximately \$757 million.
 - ➡ Mechanism under which rate charged by PSP is passed on to IXC on a real-time basis not available.

**THE COMMISSION SHOULD RECONSIDER
ADOPTION OF A CALLING-PARTY PAYS MODEL
(Cont'd.)**

- ➡ The payphone industry has not provided any evidence to the contrary.
 - ➡ APCC's only argument, that "07" sufficient if have database with PSP rates, would require unnecessary double-dipping into database at IXC/800 subscriber expense.
 - ➡ APCC fails to refute record evidence that such a database, which can provide IXCs with PSP rates on a real-time basis, is not available.

**THE COMMISSION SHOULD RECONSIDER
ADOPTION OF A CALLING-PARTY PAYS MODEL
(Cont'd.)**

- ➡ **Calling Party Pays Is The Best Market-Based Method Because:**
 - ➡ It is based on the calling party's willingness to pay.
 - ➡ Assuming the absence of locational monopolies, the calling party is able to exert downward pressure on PSP rates.
 - ➡ The 800 subscriber has no means of putting downward pressure on PSP rates.
 - ➡ A caller-pays model avoids embroiling the FCC in a proceeding to determine the extent to which commissions paid to location owners are "reasonable."
- ➡ **One Practical Method Of Implementing Caller-Pays Is The Use Of A Unique 8XX NPA Code Which Would Allow For The Provision Of A Caller-Pays Billing Option**
- ➡ **Contrary To The Arguments Of APCC And The LEC Coalition, There Are No Appropriate Market Surrogates Other Than Caller-Pays**

THE FCC MUST RECOGNIZE THAT SUBSCRIBER 800 CALLS ARE NOT LIKE EITHER ACCESS CODE CALLS OR LOCAL COIN CALLS, NOR ARE THEY SIMILAR TO EACH OTHER

- ➡ Access Code And Subscriber 800 Calling Are Two Different Types Of Services, With Different Purposes
- ➡ 800 Subscribers Provide A Wide Range Of Services And The Call Characteristics Vary According To The Type Of Service Being Provided
- ➡ Call Lengths Vary Significantly Between Access Code Calls And Subscriber 800 Calls, As Well As Between Subscriber 800 Calls:
 - ➡ Paging call: Under 30 seconds.
 - ➡ Bank holding company: 3.2-minute average.
 - ➡ Access code calls: Over 5-minute average.

**THE FCC MUST RECOGNIZE THAT SUBSCRIBER 800 CALLS
ARE NOT LIKE EITHER ACCESS CODE CALLS OR LOCAL
COIN CALLS, NOR ARE THEY SIMILAR TO EACH OTHER
(Cont'd)**

- ➡ **There Is A Significant Difference In The Amount Of Revenue Generated Among Subscriber 800 Calls, As Well As Between Subscriber 800 Calls And Access Code Calls:**
 - ➡ **Paging Calls:** Approximately \$.04 per call.
 - ➡ **All Subscriber 800 Calls:** Approximately \$.20 - \$.25 per call.
 - ➡ **Access Code Calls:** Approximately \$2.16 per call.
- ➡ **The Commission May Not Lawfully Treat All Calls Similarly When The Record Reflects The Substantial Differences Among Such Calls**

**THE FCC MUST RECOGNIZE THAT SUBSCRIBER 800 CALLS
ARE NOT LIKE EITHER ACCESS CODE CALLS OR LOCAL
COIN CALLS, NOR ARE THEY SIMILAR TO EACH OTHER
(Cont'd)**

➡ **In Order To Eliminate The Unreasonable Discrimination That Would Result Between And Among 800 Subscribers From “Per-Call” Charges, The FCC Should Adopt A Mechanism Whereby Charges Are Based On Reasonable Time Increments, *e.g.* Six Seconds**

- ➡ A measured service approach *is consistent* with the statutory requirement set forth in Section 276(b)(1)(A) that the FCC establish a “per-call compensation plan.”
- ➡ The statute does *not* require that PSPs be compensated the same amount for each call.
- ➡ Nothing in the statute or legislative history would yield a contrary result.

**THE FCC MUST RECOGNIZE THAT SUBSCRIBER 800 CALLS
ARE NOT LIKE EITHER ACCESS CODE CALLS OR LOCAL
COIN CALLS, NOR ARE THEY SIMILAR TO EACH OTHER
(Cont'd)**

- ➔ Legislative history states that, in crafting implementation of the rules, the FCC is not bound to adhere to existing mechanisms or procedures.
- ➔ A measured services approach establishes a per-call compensation plan pursuant to which PSPs are compensated for *each call* on a measured basis.
- ➔ A measured services approach prevents PSPs from receiving windfall profits from above-cost compensation, and results in the “fair” per-call compensation plan envisioned by Congress.
- ➔ A measured services approach prevents PSPs from overcharging 800 subscribers.

**THE COMMISSION SHOULD ADOPT A COMPENSATION
MECHANISM THAT MINIMIZES THE NEGATIVE IMPACT
ON 800 SUBSCRIBERS AND CONSUMERS**

➡ Impacts:

- ➡ In the absence of caller-pays, subscribers to 800 services may be forced to provide two different phone numbers in order for customers to reach them:
 - ➡ An 800 number for non-payphone calls.
 - ➡ A 1 + number for payphones.
- ➡ 800 Subscribers would have to advertise two different numbers and place two different numbers on business cards.
- ➡ Consumers would be significantly inconvenienced when they try to place an 800 call and find that they are unable to do so.